

centimeter of the sodium cacodylate contained less than 7 grains, namely, not more than 4.48 grains of sodium cacodylate.

On November 23, 1936, a plea of guilty was entered. On November 25, 1936, the defendant was adjudged guilty and a fine of \$100 was imposed.

W. R. GREGG, *Acting Secretary of Agriculture.*

26783. Misbranding of Earl May's Poultry Tablets Sulphocarbolates. U. S. v. Research Products, Inc., and Jacob H. Weiner. Pleas of guilty. Fine, \$50. (F. & D. no. 36987. Sample no. 32993-B.)

The packages containing these tablets bore false and fraudulent curative and therapeutic claims.

On July 17, 1936, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Research Products, Inc., a corporation, Kansas City, Mo., and Jacob H. Weiner, president of said corporation, charging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about March 18, 1935, from the State of Missouri into the State of Iowa, of a quantity of Earl May's Poultry Tablets Sulphocarbolates that were misbranded.

Analysis of the article showed that it contained zinc sulphocarbonate, mercuric chloride, copper sulphate, starch, and a small amount of blue color.

The article, labeled in part "Earl May's Poultry Tablets Sulphocarbolates (With Mercury). A very efficient preventive treatment for fowl cholera, fowl typhoid, coccidiosis and white diarrhea in chicks. Dosage One tablet dissolved in a pint of water for drinking purposes or mixed with feed.", was alleged to be misbranded in that said statements regarding its curative and therapeutic effects, falsely and fraudulently represented that it would be effective as a preventive treatment for fowl cholera, fowl typhoid, coccidiosis, and white diarrhea in chicks.

On September 24, 1936, pleas of guilty were entered by the defendants and the court imposed a fine of \$50.

W. R. GREGG, *Acting Secretary of Agriculture.*

26784. Misbranding of Gowan's Preparation. U. S. v. Thomas F. Maher (Gowan Chemical Co.). Tried to the court. Judgment of guilty. Fine, \$25. (F. & D. no. 37024. Sample no. 48633-B.)

The labeling of this drug preparation bore false and fraudulent curative and therapeutic claims.

On September 14, 1936, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Thomas F. Maher, trading as the Gowan Chemical Co., Baltimore, Md., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about October 16, 1935, from the State of Maryland into the State of South Carolina of a quantity of Gowan's Preparation that was misbranded.

Analysis of a sample of the article showed that it consisted essentially of volatile oils including methyl salicylate, camphor, eucalyptol, menthol (32 milliliters per 100 grams), and turpentine oil; and phenol, incorporated in a fat, such as lard.

The article was alleged to be misbranded in that certain statements, designs, and devices regarding its therapeutic and curative effects, appearing on display cartons shipped with it falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for pleurisy, spasmodic croup, coughs, congestion, inflammation, and pneumonia.

On November 27, 1936, the defendant having waived a jury, the case was tried to the court. After the Government's witnesses had been heard, the defendant was called to the stand. During the examination of the defendant, the court delivered the following remarks:

CHESNUT, *District Judge*: You have misconceived the point of the case. The point of the case is this, that you have been selling a patent medicine with representations to the public that it is an effective remedy or a valuable aid in cases of disease when it could not have any possible real value in such disease, and anybody of real intelligence, and particularly a person in your line of business, must have known that. Therefore, the representation is not only false but by virtue of circumstances under which it is made, it is legally fraudulent and, therefore, in violation of the Act. Something more is required of a man who undertakes to make a profit in selling drugs to the public than

merely a willingness to change when he is caught or found out by the Department of Agriculture. It is the affirmative duty of the citizen to comply with the law. Of course, there are a great many provisions of the law that the average citizen does not know about; but a man who is in a gainful pursuit with regard to the selling of drugs certainly ought to know whether the thing that he is selling to the public is sold under fair representations or false representations. I do not think any one could well or consistently say it is all right for him to sell this until the Department of Agriculture shut down on him.

It is perfectly true from your story, or the account you have given of it, that you have been willing to cooperate with them, and whenever they called your attention to violations you have been apparently willing to cooperate. First, you tried to do it without loss of these cartons, which certainly was not entirely successful. Then when they picked you up again after a long interval of years you made a radical change, which, apparently, is entirely satisfactory to every one, but I do not think that that constitutes the full measure of the responsibility or the duty of a man who is in the business of selling drugs to the public. I think that affirmatively he owes the duty, in fairness to himself and his reputation, and in fairness to the public, to know whereof he speaks. And, of course, it is just silly to say this sort of thing you are selling here to the public is of any value in pneumonia, and it is equally silly to say it is of any good in pleurisy and diseases which require, of course, medical treatment and not patent medicines, whether you call them quack medicines or not. I suppose there are some alleviating things that are helpful. The old-fashioned mustard plaster is, I believe, a palliative or a helpful thing in the case of pneumonia. And horse-liniment sometimes rubbed on the skin might give a certain temporary reaction which might be of some little help. But to sell a patent medicine for pneumonia, which is a very dread disease, and requires the most skilled care of physicians and nurses, and to have a poor, deluded person rely on a thing of this kind, instead of having a physician, is doing a very positive harm to society.

After the witnesses had left the stand the court remarked: "Of course, naturally not being a lawyer and not having a lawyer to advise you, it is not surprising you do not understand the legal significances of fraudulent intent. There is a difference between fraud in fact and fraud in law. What you are really telling me is that as a matter of fact you did not consciously or intentionally and wilfully desire to defraud anybody. It is also perfectly true, however, that a man who does things that inevitably lead to defrauding people and injuring people is acting legally fraudulently. It is in that sense that I think this Act applies to your case. In other words, I do not think that any dealer in patent medicines such as this is justified in putting out statements to the public which he can not back up by satisfactory authority. And the mere fact he can find a man here and there say that he believes that so and so will do this and that, when the great volume of human intelligence and knowledge is to the contrary, does not justify you in making the claims you have. That is to say, the small sporadic individual opinion here and there, or your own statement that you have been cured of cold by using this stuff, when that is opposed to the whole weight of human knowledge, in so far as it goes at the present time—you are not justified in acting on individual and sporadic personal expression of opinion as against the enlightened judgment and knowledge of people who are experienced with regard to drugs of this kind. And your case in that respect is not very different from the case I had the other day where somebody was advertising something as a cure for piles; and your case is not greatly different from the case of the B. & M. medicine that was in this Court some years ago. I understand your position to be in your own case you are not seeking to justify the statements made, you are saying you were making them inadvertently. But that is not a sufficient answer in law. A man who sells things like this with advertised recommendations or statements can not say 'I did it inadvertently.' It is barely possible, physically, I suppose, that you never read this, but you would not be permitted—certainly according to my view of the matter—to say you are guiltless because you say you did not read what you are representing in writing to the public."

Judgment of guilty was entered and a fine of \$25 was imposed.

W. R. GREGG, *Acting Secretary of Agriculture.*